



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,019	03/02/2004	Eric Robert Shepherd	QMARK 201.2	1317

7590 07/20/2009
Steven M. Hoffberg, Esq.
MILDE & HOFFBERG, LLP
Suite 460
10 Bank Street
White Plains, NY 10606

EXAMINER

SHIH, HAOSHIAN

ART UNIT	PAPER NUMBER
----------	--------------

2173

MAIL DATE	DELIVERY MODE
-----------	---------------

07/20/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/791,019	Applicant(s) SHEPHERD ET AL.	
	Examiner HAOSHIAN SHIH	Art Unit 2173	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-21.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation below

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Kieu Vu/
 Supervisory Patent Examiner, Art Unit 2173

See continuation above.

Applicant argues that a second final rejection based on new grounds of rejection is improper because the new ground of rejection was not necessitated by applicant's amendment of the claim.

In response to applicant's argument, the new ground of rejection (see final office action dated 04/02/2009 pg.3) was necessitated by applicant's claim amendment filed on 09/24/2007 (MPEP 1207.04).

1207.04 [R-3] < Reopening of Prosecution After Appeal

The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a). >Any after final amendment or affidavit or other evidence that was not entered before must be entered and considered on the merits.<

Applicant argued that the Examiner has refused to permit consideration of amendments which might have avoided contention on the new ground of rejections.

In response to applicant's argument, during a phone conversation dated 06/26/2009, the Examiner indicated the proposed amendment (Fax dated 06/24/2009) that "1. A secure user interface method, for interacting with a user , comprising:
Controlling a normal browser to request a document from a cooperative server, the normal browser providing data export support functionality;
Receiving data with the normal browser in response to the request;
Automatically determining, based on a received data encoding type, whether a secure browser or the normal browser is to be employed..." does not appear to overcome the outstanding 112 1st rejection and further consideration is rendered in light of applicant's written description argument. Further more, the applicant agreed that the proposed amendment may not overcome the 112 1st rejection and had since filed an after final response with no amendments to the claims in response to the Examiner's remarks.

Applicant argues that the limitation "or a normal browser is to be employed" is disclosed in the specification. Therefore, withdrawal of the 112 1st rejection is requested.

In response to applicant's argument, claim 1 recites: "or a normal browser is to be employed" There is no mention in the original specification of employing a normal browser. Further in accordance to the application specification Pub. No. US 2004/0230825 A1, par. [0034], [0035], [0042] and [0048], that a secure browser is deployed from a regular browser based on the specified MIME file type that triggers the secure browser. No where does the specification disclose of triggering a normal browser (claim 1) or an insecure browser (claim 9) from "a browser". Furthermore, the applicant's attempt to overcome the 112 1st rejection (remarks pg.3-11) are solely directed toward launching a secure browser from a browser when a specified file type is requested from a browser that are not relevant to the previously stated 112 1st rejection.

Applicant's arguments regarding Winneg and Chang are addressed in the final office action dated 03/30/2009.